

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

BERNARDO GARZA, ERIC GUTIERREZ,  
MIGUEL VILLARREAL, and BLAINE  
STEWARD,

Plaintiffs,

v.

1:23-CV-505-DII

GIBRALTAR U.S., INC., GIBRALTAR  
FABRICATION, LLC, GIBRALTAR  
MATERIAL DISTRIBUTION GP, LLC,  
W.W. GRAINGER, INC., and B/A  
PRODUCTS CO.,

Defendants.

**ORDER**

Before the Court is the report and recommendation of United States Magistrate Judge Mark Lane concerning Plaintiffs Bernardo Garza, Eric Gutierrez, Miguel Villarreal, and Blaine Steward's (collectively, "Plaintiffs") Motion to Remand, (Dkt. 18), Defendant B/A Products Co.'s ("B/A Products") Motion to Dismiss, (Dkt. 12), and Defendant W.W. Grainger, Inc.'s Motion for Judgment on the Pleadings, (Dkt. 15). (R. & R., Dkt. 31). Plaintiffs timely filed objections to the report and recommendation. (Objs., Dkt. 34). Defendants filed responses to Plaintiffs' objections, (Dkts. 35, 36), and Plaintiffs filed a reply, (Dkt. 37).

In the report and recommendations, the magistrate judge recommends that the Court (1) deny Plaintiffs' motion to remand and dismiss without prejudice Defendants Gibraltar U.S., Inc., Gibraltar Fabrication, LLC, and Gibraltar Material Distribution GP, LLC as improperly joined; (2) grant B/A Products' Motion to Dismiss; and (3) grant W.W. Grainger, Inc.'s Motion for Judgment on the Pleadings. (R. & R., Dkt. 31, at 12–13). In the portion of the report and recommendation analyzing B/A Products' Motion to Dismiss, the magistrate judge offers two grounds on which to

grant the motion. The magistrate judge finds that Plaintiffs' claims against B/A Products are time barred under the statute of limitations and thus should be dismissed with prejudice. Alternatively, the magistrate judge also finds that their claims should be dismissed without prejudice under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim but recommends that Plaintiffs be allowed to replead their claims against B/A Products. (*Id.* at 8–13).

A party may serve and file specific, written objections to a magistrate judge's findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Plaintiffs timely objected only to the magistrate judge's findings and recommendation as to the motion to remand, (Objs., Dkt. 34; Reply, Dkt. 37), the Court reviews that portion of the report and recommendation *de novo*. As no party has objected to the remainder of the report and recommendation, the Court reviews those portions for clear error. *See Fed. R. Civ. P.* 72 advisory committee's note ("When no timely objection is filed, the district court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."). Plaintiffs do not object to the magistrate judge's findings and recommendation as to the motion to dismiss or motion for judgment on the pleadings. Having done those reviews, and for the reasons given in the report and recommendation, the Court overrules Plaintiffs' objections, and adopts the report and recommendation in full. As for the magistrate judge's analysis of B/A Products' motion to dismiss, the Court does not reach the merits of the 12(b)(6) issue because the Court is satisfied that the claims against B/A Products are time-barred.

Accordingly, the Court **ORDERS** that the report and recommendation of United States Magistrate Judge Mark Lane, (R. & R., Dkt. 31), is **ADOPTED** in accordance with this order.

**IT IS FURTHER ORDERED** that Plaintiffs' Motion to Remand, (Dkt. 18), is **DENIED**. Plaintiffs' claims against Defendants Gibraltar U.S., Inc., Gibraltar Fabrication, LLC, and Gibraltar Material Distribution GP, LLC, are **DISMISSED WITHOUT PREJUDICE**.

**IT IS FURTHER ORDERED** that Defendant B/A Products Co.'s Motion to Dismiss, (Dkt. 12), is **GRANTED**. Plaintiffs' claims against B/A Products Co. are **DISMISSED WITH PREJUDICE** as barred by the statute of limitations.

**IT IS FURTHER ORDERED** that Defendant W.W. Grainger, Inc.'s Motion for Judgment on the Pleadings, (Dkt. 15), is **GRANTED**. Plaintiffs' claims against W.W. Grainger, Inc. are **DISMISSED WITHOUT PREJUDICE**.

**IT IS FINALLY ORDERED** that Plaintiffs are granted leave to replead their claims against W.W. Grainger, Inc. Plaintiffs shall file an amended complaint, if at all, on or before **December 4, 2023**.

**SIGNED** on November 13, 2023.



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ROBERT PITMAN  
UNITED STATES DISTRICT JUDGE